

BILL ANALYSIS

C.S.H.B. 19
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Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Texas' judicial system is highly specialized from top to bottom. According to Texans for Lawsuit Reform, Texas is one of only two states with specialized high courts. Texas has the Texas Supreme Court, which hears civil and juvenile cases, and the Court of Criminal Appeals, which hears criminal cases. Texans for Lawsuit Reform also reports that at the trial court level, the state has over 200 specialized courts, from probate courts in some counties to specialized district courts designated to hear family cases, juvenile cases, or veterans' cases. Texas, however, does not have a court specializing in resolving complex business disputes. In this respect, Texas lags behind other states. Texans for Lawsuit Reform reports that, as of 2021, 29 states are operating some form of business or complex litigation court or court system. C.S.H.B. 19 seeks to strengthen Texas' reputation as the best state in which to conduct business by creating a specialized business trial court to streamline resolutions of business disputes and by ensuring the court is staffed by qualified and skilled judges, ideally giving businesses confidence in Texas' legal system and encouraging them to incorporate and headquarter in Texas.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Supreme Court in SECTION 1 of this bill.

ANALYSIS

Creation and Jurisdiction of the Business Court

C.S.H.B. 19 amends the Government Code to create the Business Court Judicial District, composed of all counties in Texas. The bill creates the business court as a statutory court under the constitution on September 1, 2024, subject to legislative appropriation. The business court is composed of divisions geographically consistent with the administrative judicial regions and numbered to correspond with those regions. The business court has the powers provided by statute relating to district courts, including the power to issue writs of injunction, mandamus, sequestration, attachment, garnishment, and supersedeas, and to grant any relief that may be granted by a district court. The business court has civil jurisdiction concurrent with district courts in the following actions in which the amount in controversy exceeds \$10 million, excluding interest, statutory damages, exemplary damages, penalties, attorney's fees, and court costs:

- a derivative proceeding, defined by the bill as a civil suit brought in the right of a domestic or foreign corporation, a domestic or foreign limited liability company, or a

domestic or foreign limited partnership, to the extent provided by the Business Organizations Code;

- an action arising out of a qualified transaction, defined by the bill as a transaction under which a party pays or receives, or is obligated to pay or is entitled to receive, consideration with an aggregate value of at least \$10 million or in which a party lends, advances, borrows, receives, is obligated to lend or advance, or is entitled to borrow or receive money or credit with an aggregate value of at least \$10 million;
- an action regarding the governance, governing documents, or internal affairs of an organization;
- an action in which a claim under a state or federal securities or trade regulation law is asserted against:
 - an organization;
 - a controlling person or managerial official of an organization for an act or omission by the organization or by the person in the person's capacity as a controlling person or managerial official;
 - an underwriter of securities issued by the organization; or
 - the auditor of an organization;
- an action by an organization, or an owner of an organization, if the action is brought against an owner, controlling person, or managerial official of the organization and alleges an act or omission by the person in the person's capacity as an owner, controlling person, or managerial official of the organization;
- an action alleging that an owner, controlling person, or managerial official breached a duty owed to an organization or an owner of an organization by reason of the person's status as an owner, controlling person, or managerial official, including the breach of a duty of loyalty or good faith;
- an action seeking to hold an owner or governing person of an organization liable for an obligation of the organization, other than on account of a written contract signed by the person to be held liable in a capacity other than as an owner or governing person;
- an action that arises out of a contract or commercial transaction between or among organizations, owners, or governing persons;
- an action that arises out of a violation of the Finance Code or Business & Commerce Code by an organization or an officer or governing person acting on behalf of an organization, subject to the bill's provision regarding claims over which the court does not have jurisdiction;
- an action seeking injunctive relief or a declaratory judgment under Chapter 37, Civil Practice and Remedies Code, in a civil action involving a dispute based on an applicable claim; and
- an action arising out of the Business Organizations Code.

Except as otherwise provided by the bill, the business court has supplemental jurisdiction over any other claim related to a case or controversy within the court's jurisdiction that forms part of the same case or controversy. A claim within the business court's supplemental jurisdiction may proceed in the business court only on the agreement of all parties involved in the claim and the judge of the division of the court before which the action is pending.

The business court does not have jurisdiction of the following unless the claim falls within the business court's supplemental jurisdiction:

- a civil action brought by or against a governmental entity; and
- any claim arising under Business & Commerce Code provisions governing deceptive trade practices, Property Code provisions governing trusts, the Estates Code, or the Family Code.

The business court does not have jurisdiction of a claim in which a party seeks recovery of monetary damages for bodily injury or death, including a claim that would otherwise fall within the court's supplemental jurisdiction.

Filing, Transfer, and Remand of Business Court Actions

C.S.H.B. 19 provides for the following:

- the filing of an action in the business court, which includes a requirement that the filing party must plead facts to establish venue so the business court clerk can assign the action to the appropriate division of the business court;
- the transfer to a district court or county court at law or dismissal of an action over which the business court does not have jurisdiction, at the option of the filing party;
- the transfer to another division of the business court of an action initially assigned to a division the geographic territory of which is determined by the court to not include a county of proper venue for the action;
- the removal of an action filed in a district court or county court at law that is in the jurisdiction of the business court, including:
 - timely filing of a required notice of removal with the business court and the court from which the action is removed;
 - the immediate transfer of the action to the business court in accordance with rules adopted by the supreme court under the bill;
 - the assignment of the action to the appropriate division of the business court; and
 - remand of any action over which the business court does not have jurisdiction; and
- the transfer to the business court of an action filed in any court, at the request of that court's judge to the presiding judge of the court's administrative region and related notification and hearing requirements.

The bill makes a filing of an action or notice of removal in the business court subject to sanctions for frivolous pleadings and motions. The bill exempts the removal of a case to the business court from the statutes or rules governing the due order of pleading and establishes that removal of a case does not waive a defect in venue or constitute an appearance to determine personal jurisdiction. The bill requires a business court judge, on establishment of jurisdiction and venue over an action, to declare by order the county in which any jury trial for the action will be held as determined under the bill's provisions.

Qualifications, Appointment, and Salary of Business Court Judges

C.S.H.B. 19 sets out the qualifications required for a judge of the business court, including a residency requirement, and provides for the appointment of a judge to each division of the business court by the governor with the advice and consent of the senate, salaries of the judges, the constitutional oath of office, the exchange of benches by business court judges, and the method of filling a vacancy on the court. The bill requires business court judges to file sworn statements with the comptroller of public accounts for the purpose of salary payments by the state. The bill grants a business court judge all powers, duties, immunities, and privileges of a district judge and makes a business court judge eligible for membership in the Judicial Retirement System of Texas Plan Two.

C.S.H.B. 19 requires a judge to diligently discharge the duties of the office on a full-time basis and prohibits a judge from engaging in the private practice of law. The bill prohibits a business court judge from having had the judge's license to practice law revoked, suspended, or subject to a probated suspension. The bill sets out provisions relating to a judge's reappointment, removal from office, disqualification or mandatory recusal. The bill provides for the assignment of a visiting judge to a division of the business court, for objection to the assignment, for disqualification and recusal of a visiting judge, and for the taking and filing of the constitutional oath of office by a visiting judge.

Business Court Proceeding, Location, and Staff Requirements

C.S.H.B. 19 establishes that a party in an action pending in the business court has the right to a trial by jury when required by the constitution and provides for the venue for a jury trial,

depending on whether the action is originally filed in the business court or removed to the business court. A jury trial for a case in which a written contract specifies a county as venue for suits must be held in that county. The bill authorizes the parties and the business court judge to agree to hold the jury trial in any other county and provides a party may not be required to agree to hold the jury trial in a different county. The bill requires the same jury-related practice and procedure as for the district court in the county in which the trial is held and establishes that practice, procedure, rules of evidence, issuance of process and writs, and all other matters pertaining to the conduct of trials, hearings, and other business in the business court are governed by the laws and rules prescribed for district courts, unless otherwise provided. The bill requires the Texas Supreme Court to adopt rules for the issuance of written opinions by the business court.

C.S.H.B. 19 requires the business court to appoint a clerk, whose office must be located in Travis County in state-provided facilities and sets out the duties of the clerk. The bill requires a business court judge to maintain chambers in the county the judge selects within the geographic boundaries of the division to which the judge is appointed in facilities provided by the state and authorizes the Office of Court Administration of the Texas Judicial System (OCA) to contract for the use of facilities with a county. Apart from jury trials, the bill authorizes a judge to hold a court at any courtroom within the geographic boundaries of the division to which the judge is appointed as the court determines necessary or convenient for a particular civil action. The bill requires a county using existing courtrooms and facilities to accommodate the business court in the conduct of the court's hearings and other proceedings to the extent practicable.

C.S.H.B. 19 sets out provisions relating to remote proceedings but prohibits a court from requiring a party, attorney, or juror to remotely attend a jury trial or proceeding in which oral testimony is given, absent good cause or agreement of the parties. The bill requires the court to provide reasonable notice to the public that a proceeding will be conducted remotely and an opportunity for the public to observe the remote proceeding. The bill defines "remote proceeding" as a proceeding before the business court in which one or more of the participants, including a judge, party, attorney, witness, court reporter, juror, or other individual attends the proceeding remotely through the use of technology.

C.S.H.B. 19 provides for the attendance of a sheriff or deputy in a proceeding as required by the court, the appointment of necessary personnel, and the duties, responsibilities, and remuneration of court officials. The bill requires the Texas Supreme Court to set fees for filings and actions in the business court in amounts sufficient to cover the costs of administering the bill's provisions, taking into account fee waivers necessary for the interest of justice. The bill also provides for the seal of the court.

C.S.H.B. 19 requires the Texas Supreme Court to promulgate rules of civil procedure as the supreme court determines necessary, including rules providing for the timely and efficient removal and remand of cases to and from the business court and the assignment of cases to judges of the business court. The bill authorizes the business court to adopt rules of practice and procedure consistent with the Texas Rules of Civil Procedure or the Texas Rules of Evidence.

Appeal of Business Court Actions

C.S.H.B. 19 establishes that the Fifteenth Court of Appeals has exclusive jurisdiction over an appeal from an order or judgment of the business court or an original proceeding related to an action or order of the business court except in instances in which the supreme court has concurrent or exclusive jurisdiction. If the Fifteenth Court of Appeals is not created, an appeal from an order or judgment of the business court or an original proceeding related to an action or order of the business court must be filed in the applicable intermediate court of appeals with jurisdiction of the appeal. The procedure governing an appeal or original proceeding from the business court is the same as the procedure for an appeal or original proceeding from a district

court. If the specific legislative appropriation for the business court is not made and the court is not created, a court of appeals retains the jurisdiction the court had on August 31, 2024.

Transition and Procedural Provisions

C.S.H.B. 19 grants the supreme court exclusive and original jurisdiction over a challenge to the constitutionality of the bill or any part of the bill and authorizes the supreme court to issue injunctive or declaratory relief in connection with the challenge. The bill requires the business court to be staffed by retired or former judges or justices who are appointed to the court by the chief justice of the supreme court if the appointment of judges by the governor to the divisions of the business court is held by the supreme court as unconstitutional.

C.S.H.B. 19 requires the governor to appoint judges to the First, Third, Fourth, Eighth, and Eleventh Business Court Divisions as soon as practicable after the bill's effective date and to appoint, with the advice and consent of the senate, judges to the Second, Fifth, Sixth, Seventh, Ninth, and Tenth Business Court Divisions on or before September 1, 2026, but not before July 1, 2026.

C.S.H.B. 19 applies to civil actions commenced on or after September 1, 2024.

EFFECTIVE DATE

September 1, 2023.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 19 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

Creation and Jurisdiction of the Business Court

The substitute includes a provision establishing that the business court is composed of divisions geographically consistent with the 11 administrative judicial regions and numbered to correspond with those regions, which did not appear in the introduced. The substitute also includes a provision absent from the introduced establishing that the business court is a statutory court created under the constitution.

The introduced defined "qualified transaction" by reference as a transaction under which a party pays or receives, or is obligated to pay or is entitled to receive, consideration with an aggregate value of at least \$1 million, or in which a party lends, advances, borrows, or receives, or is obligated to lend or advance or is entitled to borrow or receive, money or credit with an aggregate value of at least \$1 million. The substitute changes the aggregate value in the transaction from at least \$1 million to at least \$10 million.

The substitute replaces a derivative action on behalf of an organization, as it appeared in the introduced, with a derivative proceeding as an action in which the business court has civil jurisdiction concurrent with district courts. Accordingly, the substitute includes a definition for "derivative proceeding," which was absent from the introduced.

Whereas the introduced granted the business court civil jurisdiction concurrent with district courts in an action arising out of or relating to a qualified transaction, the substitute grants that civil jurisdiction to the business court in an action arising out of a qualified transaction.

The substitute includes a provision absent from the introduced granting the business court civil jurisdiction with district courts in an action regarding the governing documents of an organization.

The substitute revises the introduced version's provision establishing that the business court has civil jurisdiction concurrent with district courts in an action alleging that an owner, managerial official, or controlling person breached a duty by reason of the person's status as an owner, managerial official, or controlling person, including the duty of care, loyalty, or good faith, as follows:

- by specifying that the duty must be owed to an organization or an owner of an organization; and
- by removing duty of care from the duties whose breach establishes a qualifying action.

The substitute revises the introduced version's provision establishing that the business court has civil jurisdiction concurrent with district courts in an action by an organization or an owner or a member of an organization under certain circumstances by removing a member of an organization as a person who may be pursuing such an action.

The substitute revises the introduced version's provision establishing that the business court has civil jurisdiction concurrent with district courts in an action seeking to hold an owner, member, or governing person of an organization liable for an obligation of the organization by removing a member of an organization from the actors whose actions fall under the jurisdiction.

The substitute revises the introduced version's provision establishing that the business court has civil jurisdiction concurrent with district courts in an action that arises against, between, or among organizations, governing authorities, governing persons, members, or owners, relating to a contract transaction for business, commercial, investment, agricultural, or similar purposes in which the amount in controversy exceeds \$10 million, excluding interest, statutory damages, exemplary damages, penalties, attorney's fees, and costs, as follows:

- by omitting the specification that the action relate to such a contract transaction and including a specification that the action instead arise out of a contract or commercial transaction; and
- by omitting the specification that the action relating to a contract transaction may be against organizations, governing authorities, governing persons, members, or owners, and including a specification that the action may instead arise out of a contract or commercial transaction between or among organizations, owners, or governing persons.

The substitute revises the introduced version's provision establishing that the business court has civil jurisdiction concurrent with district courts in an action that involves violations of the Finance Code or Business & Commerce Code in which the amount in controversy exceeds \$10 million, excluding interest, statutory damages, exemplary damages, penalties, attorney's fees, and costs, as follows:

- by specifying that the action must arise out of a violation, instead of involve a violation;
- by specifying that the violation must be made by an organization or an officer or governing person acting on behalf of the organization; and
- by specifying that the qualification of the action is subject to conditions relating to the business court's supplemental jurisdiction, as added by the substitute.

While both the introduced and substitute set out specified actions within which the business court has civil jurisdiction with district courts, the introduced includes the condition that the amount in controversy in the following actions must exceed \$10 million, excluding interest, statutory damages, exemplary damages, penalties, attorney's fees, and costs, for purposes of qualifying under that jurisdiction:

- an action arising out of or relating to a qualified transaction;

- an action that arises against, between, or among organizations, governing authorities, governing persons, members, or owners, relating to a contract transaction for business, commercial, investment, agricultural, or similar purposes; and
- an action that involves violations of the Finance Code or Business & Commerce Code.

The substitute applies the condition that the amount in controversy must exceed \$10 million, excluding interest, statutory damages, exemplary damages, penalties, attorney's fees, and court costs, for purposes of qualifying under the business court's concurrent jurisdiction to all actions in which the business court has such jurisdiction under the substitute's provisions.

The substitute includes provisions absent from the introduced that do the following:

- grant the business court supplemental jurisdiction over any other claim related to a case or controversy within the court's jurisdiction that forms part of the same case or controversy; and
- establish that a claim within the business court's supplemental jurisdiction may proceed in the business court only on the agreement of all parties involved in the claim and the business court judge of the division of the court before which the action is pending.

While both the introduced and substitute establish that the business court does not have jurisdiction of certain actions, the substitute makes the following changes:

- omits the exception that a governmental entity may invoke or consent to the jurisdiction of the business court with respect to a civil action brought by or against the governmental entity;
- omits the exception that all parties and the business court judge may agree that a claim arising under Business & Commerce Code provisions governing deceptive trade practices, Property Code provisions governing trusts, the Estates Code, or the Family Code may proceed; and
- includes a specification instead that the business court does not have jurisdiction over such a civil action or claim unless the claim falls within the business court's supplemental jurisdiction.

The substitute revises the introduced version's provision establishing that the business court does not have jurisdiction of a claim in which a party seeks recovery of monetary damages for personal injury and death as follows:

- by omitting the exception that all parties and the business court judge may agree that such a claim may proceed;
- by changing the relief that cannot be sought from monetary damages for personal injury to monetary damages for bodily injury; and
- by specifying that the business court does not have jurisdiction of a claim that would otherwise fall within the court's supplemental jurisdiction if a party to the claim seeks recovery of monetary damages for bodily injury or death.

Filing and Removal of a Business Court Action

The substitute includes the following provisions, which did not appear in the introduced:

- a requirement for the party filing an applicable action with the court to plead facts to establish venue in a division of the business court and a requirement for the business court clerk to assign the action to the appropriate division;
- a requirement for a court to transfer to another division of the business court an action assigned to a division that the court determines the division's geographic territory does not include a county of proper venue;
- a requirement for a party removing an action filed in a district or county court to the business court to file a notice of removal with the business court and the applicable court by a specified deadline;

- a requirement for the immediate transfer of the action to the business court in accordance with supreme court rules adopted under the bill and for the assignment of the action to the appropriate division of the business court;
- a provision making the filing of an action or a notice of removal in the business court subject to statutory sanctions for pleadings and motions; and
- an authorization for the transfer to the business court of an action filed in any court, at the request of the judge to the presiding judge of the court's administrative region and related notification and hearing requirements.

Whereas the introduced authorized a party to select the county to which an action may be transferred, if the action could have been filed in more than one county and is transferred due to the business court not having subject matter jurisdiction of the action, the substitute includes a requirement for a division of a business court, if it determines that the division's geographic territory does not include a county of proper venue for the action, to transfer the action to a division of the court that includes a county of proper venue.

Business Court Judges

The substitute replaces the requirement in the introduced for a business court judge to be a resident of Texas for at least two years before appointment with a requirement for the judge to have been a resident of a county within the division of the business court to which the judge is appointed for at least five years before appointment.

The substitute includes the following provisions, which did not appear in the introduced:

- a prohibition against a business court judge having had the judge's license to practice law revoked, suspended, or subject to a probated suspension;
- an authorization for business court judges to exchange benches and sit and act for each other in any matter pending before the court; and
- a requirement for a business court judge to take the constitutional oath of office required of appointed officers of Texas and file the oath with the secretary of state.

Whereas the introduced required a retired or former judge or justice to file the constitutional oath of office with the supreme court before accepting an assignment as a visiting judge, the substitute requires the oath to be filed with the secretary of state.

Whereas the introduced required the governor with the advice and consent of the senate to appoint seven judges to serve the business court, the substitute requires the governor with the advice and consent of the senate to appoint a judge to each of the 11 divisions of the business court.

The substitute omits the following provisions that were in the introduced:

- the prohibition against the governor appointing more than three judges who reside in the same county;
- the provision setting a term limit of two years for a judge of the business court; and
- the requirement for the total annual salary of a business court judge to include the maximum amount of county contributions and supplements allowed by law to be paid to a district judge.

The substitute includes a provision absent from the introduced that expands the applicability of statutory provisions regarding judicial salaries to include business court judges.

The substitute includes a provision making a business court judge eligible for membership in the Judicial Retirement System of Texas Plan Two, which did not appear in the introduced.

Business Court Proceeding, Location, and Staff Requirements

The substitute includes a requirement for a business court judge, on establishment of jurisdiction and venue over an action, to declare by order the county in which a jury trial for the action will

be held, which did not appear in the introduced. The substitute includes a requirement for a jury trial for a case in which a written contract specifies a county as venue for suits to be held in that county, which did not appear in the introduced.

With respect to the bill's provisions relating to written opinions, the substitute replaces the requirement that appeared in the introduced for the business court to issue a written opinion when deciding issues of law by order or judgment, subject to certain exceptions, with a requirement for the supreme court to adopt rules for the issuance of written opinions by the business court.

Whereas the introduced made the business court's adopted rules of practice and procedure subject to any approval required by the supreme court or statute, the substitute omits this condition and includes a condition that the adopted rules of practice and procedure instead be consistent with the Texas Rules of Civil Procedure or the Texas Rules of Evidence.

Whereas the introduced required the business court to provide rates for fees associated with filings and actions in the business court, the substitute requires the supreme court to set fees for filings and actions in the business court.

The substitute replaces the requirement that was in the introduced for each business court judge to maintain chambers in the county seat of the judge's county of residence with a requirement for the judge to maintain chambers in the county the judge selects within the geographic boundaries of the division to which the judge is appointed. The substitute includes an authorization absent from the introduced for OCA to contract for the use of facilities with a county for purposes of the requirement for each business court judge to maintain chambers in such a county.

Whereas the introduced authorized the business court or any business court judge to hold court at any location in Texas, the substitute includes a requirement for the business court or any business court judge to hold court at any courtroom within the geographic boundaries of the division to which the judge is appointed. The substitute includes a requirement not in the introduced for a county using existing courtrooms and facilities to accommodate the business court in the conduct of the court's hearings and other proceedings.

The introduced required the business court to use the most advanced technology feasible when necessary and appropriate to facilitate expeditious proceedings in matters brought before the court and an authorization for counsel and parties to appear before the business court by means of Internet-based or other technological devices rather than in person. The substitute omits these provisions and includes the following:

- an authorization for the business court instead to conduct a remote proceeding;
- a definition for "remote proceeding";
- a prohibition against the court requiring a party, attorney, or juror to remotely attend a jury trial or proceeding in which oral testimony is given, absent good cause or agreement of the parties;
- a requirement for the business court to conduct a remote proceeding from a courtroom or the facilities provided to a business court judge by the state; and
- a requirement for the business court to provide reasonable notice to the public that a proceeding will be conducted remotely and an opportunity for the public to observe the remote proceeding.

With respect to the bill's authorization for the business court to appoint personnel, the substitute makes the following changes:

- omits the condition that the appointment of personnel is subject to any limitations provided by the General Appropriations Act;
- states that the business court shall appoint a clerk, instead of the introduced version's permissive language that the business court may appoint a clerk; and

- includes an authorization for the business court to appoint personnel to assist the clerk of the court, which did not appear in the introduced.

Whereas the introduced required a business court clerk to fulfill the legal and administrative functions of a district clerk and an appellate court clerk, the substitute requires the clerk to fulfill those duties of only a district clerk.

Transition and Procedural Provisions

The substitute includes the following provisions, which did not appear in the introduced:

- a provision granting the supreme court exclusive and original jurisdiction over a challenge to the constitutionality of the bill or any part of the bill;
- an authorization for the supreme court to issue injunctive or declaratory relief in connection with the challenge; and
- a requirement for the business court to be staffed by retired or former judges or justices who are appointed to the court by the supreme court if the appointment of judges by the governor to the divisions of the business court is held by the supreme court as unconstitutional.

The substitute includes the following requirements for the governor, which did not appear in the introduced:

- as soon as practicable after the bill's effective date, to appoint judges to the First, Third, Fourth, Eighth, and Eleventh Business Court Divisions; and
- on or before September 1, 2026, but not before July 1, 2026, to appoint judges to the Second, Fifth, Sixth, Seventh, Ninth, and Tenth Business Court Divisions.

The substitutes changes the following:

- the date the business court is created from January 1, 2025, as in the introduced, to September 1, 2024; and
- the actions to which the bill's changes apply from civil actions commenced on or after January 1, 2025, as in the introduced, to civil actions commenced on or after September 1, 2024.

Whereas the introduced established that a court of appeals retains the jurisdiction the court had on December 31, 2024, if the business court is not created by legislative appropriation, the substitute changes the date to August 31, 2024.